

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

IN RE: )  
EASTERN LIVESTOCK CO., LLC ) CASE NO. 10-93904 BHL 11  
Debtor )

## **OBJECTION TO MOTION TO APPROVE AN INFORMAL AD HOC COMMITTEE**

Nancy J. Gargula, United States Trustee, by Charles R. Wharton, Trial Attorney, objects to the Motion to Approve an Informal Ad Hoc Committee (“Motion”) filed by John W. Ames, Elliott D. Levin, Laura Day DelCotto, Daniel J. Donnellon and Walter Scott Newbern, III on behalf of their respective, numerous clients.

1. On November 14, 2011, the above Motion was filed.
2. The Motion seeks to allow the movants to “act jointly to protect the common interests of the Creditor Ad Hoc Members”. Motion ¶ 1.
3. The concept of acting jointly as an ad hoc committee is one that the United States Trustee does not object to. Court approval of such committees is not required or specifically contemplated by the Bankruptcy Code or Rules. However, the Motion seeks to alter the nature of an ad hoc committee by seeking relief from required disclosures and by seeking an advisory opinion from the Court.
4. The Motion requests that the Court order that: “(a) all communications, work product and discussions between Ad Hoc Committee Members and their Counsel will be entitled to the same evidentiary privileges and confidentiality as accorded members of official committees;” indicating by footnote that they are entering into a Common

Interest/Joint Defense Agreement among themselves, although such Agreement was not attached.

5. The proposed Ad Hoc Committee members (“Committee Members”) are asking the Court for an advisory opinion by requesting the Court make the confidentiality decision prior to any party’s attempt to discover those communications. It is well settled that federal courts may not issue advisory opinions. *In re Airadigm Communications*, 616 F.3d 642, 654 (7<sup>th</sup> Cir. 2010) (citing *Sierra Club v. Morton*, 405 U.S. 727, 732 n.3, 92 S.Ct. 1361, 31 L.Ed. 636 (1972) and *Hayburn’s Case*, 2 U.S. 408, 2 Dall. 409, 1 L.Ed. 436 (1792) ). To the extent such discovery is attempted by another party, the efficacy of the agreement should be determined at that time. Accordingly, the Motion should be denied, at least in part, on this basis.
6. The Motion also requests no further Fed.R.Bankr.Pro. 2019 disclosures be required of the Committee Members or their counsel. The Committee Members assert that the disclosures made thus far in the case are sufficient.
7. FRBP 2019 was amended, effective December 1, 2011. The newly amended rule is applicable to all cases filed on or after December 1, 2011 and is applicable, if just and practicable, to all cases filed prior to that time. U.S. Supreme Court Order Adopting Bankruptcy Rule Amendments (April 26, 2011). In that this proposed ad hoc committee has not yet been formed, there is no reason that FRBP 2019, as amended, should not be made applicable to the proposed committee in this case.
8. The newly amended FRBP 2019 further emphasizes the requirements for significant disclosures by both groups of creditors acting in concert in chapter11 cases and the professionals representing them. FRBP 2019(c) now requires:

(c) INFORMATION REQUIRED. The verified statement shall include:

(1) the pertinent facts and circumstances concerning:

(A) with respect to a group or committee, other than a committee appointed under § 1102 or § 1114 of the Code, the formation of the group or committee, including the name of each entity at whose instance the group or committee was formed or for whom the group or committee has agreed to act; or  
(B) with respect to an entity, the employment of the entity, including the name of each creditor or equity security holder at whose instance the employment was arranged;

(2) if not disclosed under subdivision (c)(1), with respect to an entity, and with respect to each member of a group or committee:

(A) name and address;  
(B) the nature and amount of each disclosable economic interest held in relation to the debtor as of the date the entity was employed or the group or committee was formed; and  
(C) with respect to each member of a group or committee that claims to represent any entity in addition to the members of the group or committee, other than a committee appointed under § 1102 or § 1114 of the Code, the date of acquisition by quarter and year of each disclosable economic interest, unless acquired more than one year before the petition was filed;

(3) if not disclosed under subdivision (c)(1) or (c)(2), with respect to each creditor or equity security holder represented by an entity, group, or committee, other than a committee appointed under § 1102 or § 1114 of the Code:

(A) name and address; and

(B) the nature and amount of each disclosable economic interest held in relation to the debtor as of the date of the statement; and

(4) a copy of the instrument, if any, authorizing the entity, group, or committee to act on behalf of creditors or equity security holders.

9. In addition, FRBP 2019(d) requires that, whenever committee members are taking a position before the court or soliciting plan votes, the committee members must file supplemental statements if there are material changes to the previously filed disclosures. As such, any approval of the Informal Ad Hoc Committee should include a requirement that complete FRBP 2019 disclosures be made, on a continuing basis, pursuant to the newly amended rule.

WHEREFORE, the United States Trustee objects to the Motion to Approve an Informal Ad Hoc Committee and requests such other relief as is just and proper.

Respectfully Submitted,

Nancy J. Gargula  
UNITED STATES TRUSTEE

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 12, 2011, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on December 12, 2011, a copy of the foregoing was mailed by first-class U.S. Mail, postage prepaid, and properly addressed to the following:

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